

SUPPLEMENT TO APPROVED LOANS**OVERVIEW****In This Section**

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**REFINANCING
DISCUSSION****Subsequent
Disclosure
Requirements
for Refinancings**

Confusion is experienced by bankers and examiners regarding explanation of required disclosures pursuant to the closed-end credit provisions of Regulation Z, Real Estate Settlement Procedures Act (RESPA), and Home Mortgage Disclosure Act (HMDA).

Refer to Subsequent Disclosure Requirements and Regulation C Reporting Requirements for the Refinancing of Loans to Consumers, Memorandum to Regional Directors, dated 3/7/96.

An explanation of required disclosures for a "refinancing" follows:

The terms of the original note (#1) included 59 monthly payments and a balloon payment for the balance. The loan is secured by a 1-4 family residential dwelling.

A new loan is made for the amount of the balloon payment. (The borrower signed a new note (#2) for the balloon payment amount.) The terms of note #2 include 59 monthly payments and a balloon payment for the balance. The remaining terms of note #2 are the same as note #1, except the APR and monthly payment amounts declined due to a reduction in the interest rate.

Note #2 references that this loan is secured by the original deed of trust securing note #1. No new deed of trust is signed or filed. The bank did not charge any closing costs for the new loan, for example, filing fees, points, appraisal fees, etc.

RESPA and TIL are applicable to this transaction (determined to meet the definition of a "refinancing" versus a "renewal") in part, because of the definition of a "refinancing" in Section 226.20(a) of Regulation Z.

**TIL
Considerations**

As stated in Section 226.20(a), a refinancing occurs when an existing obligation subject to closed-end disclosures is satisfied and replaced by a new obligation by the same consumer with the same lender. The key terms are "satisfied" and "replaced" and both terms must be met.

REFINANCING

To qualify as a "refinancing", the new obligation must replace the prior obligation, regardless of whether the prior obligation's terms are changed. The new

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TIL
Considerations
(cont'd)

obligation must also involve the original creditor and the original consumer from the original obligation.

A new obligation that has a lower APR than the original obligation with a corresponding change in the payment schedule is not considered a refinancing and no further disclosures are required. A corresponding change would include a shortened maturity date, reduced number of payments, or smaller required payments; however, the Commentary makes clear that this exception **does not apply** if the maturity is lengthened or if the payment amount or number of payments is increased beyond that remaining on the existing transaction. (Refer to Comment 20(a)(2)-2)

In the example above, note #2 is a refinancing, as contemplated in the Commentary, because: (a) the APR was reduced and the maturity was lengthened; and (b) the number of payments was increased beyond that remaining on the existing transaction (i.e., the consumer has to make 59 more payments and another balloon payment in addition to the original 59 payments and balloon payment, thus lengthening the maturity, as well as increasing the number of payments). Any one of the above stated occurrences will disqualify the new extension from consideration as a non-refinancing transaction. (Refer to Section 226.17(c)(1))

Please note that when reviewing a residential mortgage loan with a variable-rate feature that was not disclosed; if the lender includes a variable-rate feature at time of refinancing, a new disclosure is required. (Refer to Comment 19(a)-3)). For example, a renewable balloon-payment mortgage that was disclosed as a variable-rate transaction is not subject to new disclosure requirements when the variable-rate feature is invoked.

RESPA
Considerations

RESPA requires pertinent and timely disclosures regarding the nature and costs of the real estate settlement process and is applicable to all federally related mortgage loans, with certain exceptions. (Refer to Section 2 of RESPA) A federally related mortgage loan is defined to include a refinancing. (Refer to Section 3500.2 (Federally related mortgage loan)(1)(i)). A refinancing of a transaction with the same lender is defined in RESPA to be similar to Section 220.20(a) of Regulation Z, including the five types of refinancing transactions which are not treated as refinancings and do not require subsequent disclosures (Refer to 3500.2 Refinancing)

If Regulation Z requires a subsequent disclosure so will RESPA, except that RESPA also includes refinancing transactions with a new lender to replace an existing obligation when no transfer of title is involved. (Refer to 3500.2 Refinancing); Preamble to HUD's Final Rule amending Regulation X, 59 Fed Reg. 6505, 6506 (February 10, 1994))

REFINANCING
DISCUSSION
(cont'd)

The regulation requires covered financial institutions to report HMDA data for a given calendar year in which a final action is taken regarding applications for, and originations and purchases of, home purchase and home improvement loans, including refinancings of both. (Refer to Section 203.4(a) of Regulation C)

HMDA Considerations

On December 9, 1994, the Board of Governors of the Federal Reserve System ("Board"), in its discussion of Purpose Code 3 in the preamble to its Final Rule amending Regulation C, stated the "rule limits reporting of refinancings to those that result in the satisfaction of an existing obligation and its replacement by a new obligation by the same borrower." (Preamble to Final Rule amending Regulation C, 59 Fed. Reg. 63698, 63702 (December 9, 1994))

Although a refinancing involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower; for Regulation C purposes it should not be reported if, under the loan agreement, the financial institution is unconditionally obligated to refinance the obligation, or the financial institution is obligated to refinance the obligation subject to conditions within the borrower's control. (Refer to Paragraph V.A.5 Code 3a of Appendix A of Part 203)

In the example above with note #1 and note #2, note #2 would be considered a refinancing under HMDA, and must be reported on the HMDA-LAR because the extension (note #2) of the loan was not unconditional in the original contract and whether or not to make the extension was under the control of the financial institution and not the consumer.

Use of the Flow Chart

This note continues below with a flow chart outline which can be used for guidance when reading the regulations governing subsequent disclosures for the purposes of Regulation Z, RESPA and Regulation C. The outline has been prepared solely as a learning aid and can be used when reading the Federal Reserve's Regulations Z and C, and HUD's Regulation X. It is not a substitute for regulations, nor is it to be construed as a legal interpretation from the FDIC.

This flow chart is for guidance and is not an official FDIC document; nor is it binding upon the FDIC or its Board of Directors.

**GUIDELINES FOR SUBSEQUENT DISCLOSURES
PURSUANT TO
THE FEDERAL RESERVE'S
SECTION 226.20(a) OF REGULATION Z,
12 CFR SECTION 226.20(a);
PART 203 OF REGULATION C,
12 CFR PART 203,
AND
SECTION 3500.5(a) and (b)(1) - (7) OF REGULATION X,
OF THE OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING –
FEDERAL HOUSING COMMISSIONER – HUD.
24 CFR SECTION 3500.5(a) and (b)(1) - (7)**

Revised June 11, 1996

This outline provides a flow chart for subsequent disclosures for the refinancing of loans to consumers. This outline has been prepared solely for guidance and as a learning aid and is to be used when reading the Federal Reserve's Regulation Z and C and HUD's Regulation X. It is not a substitute for regulations, nor is it to be construed as a legal interpretation of the FDIC's Legal Division.

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